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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/539,431

06/20/2005

Philippe Guillotel

PF030007

6805

24498 7590 12/02/2009  
Robert D. Shedd, Patent Operations  
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EXAMINER

ASHRAF, WASEEM

ART UNIT

PAPER NUMBER

2455

MAIL DATE

DELIVERY MODE

12/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/539,431	GUILLOTET ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	WASEEM ASHRAF	2455	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08/06/2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-13 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                     |                                                                   |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                         | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

A telephone call was made to Jack Schwartz (#34, 721) on 11/24/2009 to request an oral election to the above restriction requirement, but did not result in an election being made.

### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species of the claimed invention: Species 1: A method of calculating the round trip transmission delay between sender and a receiver by introducing a time delay at the receiver between a moment of reception of the content and the moment of sending of the reception data by the receiver. (See Pg.8, lines 21-31); Species 2: A method of adjusting bit rate by varying the power loss parameter  $p$  of the protocol (See Pg. 9, lines 1-5, and Pg. 9, lines 20-25). Species 3: A method of determining a value to be attained for the bit rate of the stream of content as a function of a rate of sharing capabilities of the receiver (See Pg. 10, lines 16-26 and Pg. 87).

Related inventions are distinct if the inventions as claimed are not connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is patentable (novel and nonobvious) over the other (though they may each be unpatentable over the prior art). See MPEP § 802.01(II).

In the instant case, the Species 1 and 2 are not connected in at least mode of operation, which is clearly evidenced by pages 8, and 9, respectively.

The examiner has determined that the Spices 1 and 2 differ in mode of operation from one another in ways that would not be obvious to one in ordinary skills in the art at the time the invention was made. The species 1 is related to a method of adjusting bit rate by inducing the time delay at the receiver side, and the species 2 is related to a method of adjusting bit rate by adjusting the power loss parameter. Therefore, Spices 1 and 2 are patentably distinct from one another, though they may each be unpatentable over the prior art.

The species 1 and 3 are not connected in at least mode of operation, which is clearly evidenced by pages 8 and pages 10, respectively.

The examiner has determined that the Spices 1 and 3 differ in mode of operation from one another in ways that would not be obvious to one in ordinary skills in the art at the time the invention was made. The species 1 is related to a method of adjusting bit rate by inducing the time delay at the receiver side, and the species 3 is related to adjusting the bit rate based on the shared capabilities of the receiver. Therefore, Spices 1 and 3 are patentably distinct from one another, though they may each be unpatentable over the prior art.

The species 2 and 3 are not connected in at least mode of operation, which is clearly evidenced by pages 84 and pages 87, respectively.

The examiner has determined that the Spices 2 and 3 differ in mode of operation from one another in ways that would not be obvious to one in ordinary skills in the art at the time the invention was made. The species 2 is related to a method of adjusting bit rate by adjusting the power loss parameter, and the species 3 is related to adjusting the bit rate based on the shared

capabilities of the receiver. Therefore, Spices 2 and 3 are patentably distinct from one another, though they may each be unpatentable over the prior art.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim appears to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicant is given **ONE (1) MONTH, or THIRTY (30) DAYS** from the mailing date of this communication, whichever is longer, within which to respond to this election/restriction requirement in order to avoid abandonment (35 U.S.C. § 133). Extensions of this time period may be granted under 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to WASEEM ASHRAF whose telephone number is (571)270-3948. The examiner can normally be reached on Monday through Friday / 7:30 A.M to 5:00 P.M EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2455

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. A./

Examiner, Art Unit 2455

11/25/09

/saleh najjar/

Supervisory Patent Examiner, Art Unit 2455